IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17/04/2004

Coram

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.R. SINGHARAVELU

Criminal Original Petition No. 2128 of 2003

Karuppiah. .. Petitioner.

-Vs-

1. State of Tamil Nadu,
represented by Secretary to
Government, Home Department,
Fort St. George, Chennai-600 009.

2. Deputy Superintendent of Police,
District Crime Branch,
Madurai District. .. Respondents.

Petition filed under Section 482 of the Code of Criminal Procedure to direct the first respondent to appoint Mr. K.G. Kannabiran, Senior Advocate, Secundrabad, as Special Public Prosecutor to conduct the Criminal Appeals arising out of S.C.No . 10/2001 dated 26-07-2001, on the file of the special Court (under S.C and S.T Act) (Prl. Sessions Judge), Salem, including C.A. Nos. 803, 871, 863/2001 before this Court.

Mr. P. Rathinam:- For petitioner.

Mr. I. Subramaniam, Public Prosecutor:- For Respondents.

:ORDER
(Order of Court was made by P. Sathasivam, J.,)

One Karuppiah, elder brother of one Murugesan, who was the President of Melavalavu Panchayat in Madurai District, has filed the above petition under Section 482 of the Code of Criminal Procedure praying for direction to the State of Tami l Nadu to appoint Mr. K.G. Kannabiran, Senior Advocate, Secundrabad as Special Public Prosecutor to conduct Criminal Appeals arising out of S.C.No.10 of 2001 dated 26-7-2001 on the file of Special Judge (under SC and ST Act) (Principal sessions Judge), S alem, including C.A.Nos. 803, 871, 863 of 2001 before this Court.

2. In the affidavit filed in support of the above application, it is stated that the petitioner herein is the elder brother of one Murugesan, who was the President of Melavalavu Panchayat in Madurai District. The said post was reserved for the members of Scheduled Castes. His brother Murugesan was duly elected as President of Melavalavu Panchayat on 31-12-1996. One Mookan was elected as Vice-President of the Panchayat. He was also a member of the Scheduled caste. These two along with t wo village Assistants and some others were returning to their village from Madurai on 30-6-1997, after representing to the District Collector of Madurai for disbursing the relief amount to those whose houses/huts were gutted on 9-9-1996 at the instance of persons belonging to Kallar community. At 3.15 P.M. on 30-6-1997, the bus was intercepted at Melur-Natham Road at Sennagarampatty junction by a mob of 50 persons and above and the bus was forcibly stopped by one Duraipandi. The members of the mob wer e armed with deadly weapons. They hurled abuses at Murugesan and others by mentioning the caste name, chased them and brutally murdered Murugesan,

Chellathurai and Sevamoorthy. In the same incident, Raja, Boopathy and Mookan were also murdered. The hea d of Murugesan was severed from the body by the assailants and it was thrown in a well nearby.

3. A case in Crime No.508/97 was registered by Melur Police Station. After investigation, charge sheet was filed by the second respondent herein as against 41 persons for offences under Sections 147, 148, 307, 341, 302 read with 120-B IPC and Sections 3 (2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. At the instance of the petitioner and others, a Division Bench of this Court in Crl.O.P.No.126/99 on 14-12-2000 transferred the case from Madurai to Salem. Based on the suggestion of the Division Bench, the first respondent-Government appointed one Mr. P. Thirumalairajan as Special Public Prosecutor to conduct the trial of the case at Salem.

5. On 26-7-2001 the learned Principal sessions Judge in S.C.No.10/2001, convicted 17 accused and acquitted the remaining accused. Some of the convicted accused have preferred Criminal Appeals before this Court and the Division Bench have a dmitted those appeals.

6. Though the petitioner even as early as 10-8-2001 sent a representation to the Chief Secretary to the Government requesting to appoint one Mr. K.G. Kannabiran, senior advocate, Secundrabad, as Special Public Prosecutor to conduct the cri minal appeals before this Court, there is no response from the Government in spite of reminders. The State has not so far preferred any appeal as against the acquittal of 23 accused. In such a circumstance, the petitioner has filed the present petition seeking appropriate direction for appointment of Mr. K.G. Kannabiran, senior advocate, Secundrabad as Special Public Prosecutor to conduct the appeals arising out of S.C.No.10 of 2001 dated 26-7-2001 on the file of the Principal Sessions Judge, Salem.

7. Pursuant to the notice ordered by this Court, a counter has been filed by the respondents stating that the State Public Prosecutor and his Office are fully competent and equipped to carry out the cause of the petitioner which is

in fact t he cause of the State. With regard to the claim of the petitioner, it is stated that there is no provision of law entitling aggrieved persons to have counsel of their own choice whose interest is being fully taking care of by the State. It is further s tated that since the Public Prosecutor's office does not suffer any infirmity from further prosecuting the cases, such prayer for appointment of a counsel for the defacto complainant or aggrieved person's choice does not merit consideration. It is also stated that the Public Prosecutor is not only a senior advocate, but also fully equipped in the Criminal side; accordingly prayed for dismissal of the above petition.

8. Heard Mr. P. Rathinam, learned counsel for the petitioner and Mr. I. Subramaniam, learned Public Prosecutor for respondents.

9. There is no dispute that initially Melur Police have registered a case in Crime No. 508/97 against 41 persons as accused for offences under sections 147, 148, 307, 341, 302 r/w 120-B IPC and section 3 (2)(v) of the Scheduled Castes a nd Scheduled Tribes (Prevention of Atrocities) Act, 1989. It is also not in dispute that due to apprehension expressed by the petitioner and others of the affected group, a Division Bench of this Court in Crl.O.P.No. 126/99 on 14-12-2000, transferred al l the cases from the District Court, Madurai to Prl. Sessions Court, Salem which is also a Special Court constituted under the SC and ST Act. It is also not disputed that by judgement dated 26-7-2001 in S.C.No.10/2001, the learned trial Judge, convicted 17 accused and acquitted the remaining accused. It is the grievance of the petitioner that the convicted accused have preferred appeals which were entertained by a Division Bench of this Court and notices were ordered. It is also the grievance of the p etitioner that so far the State has not preferred appeal as against the acquittal of 23 accused. Mr. P. Rathinam, learned counsel for the petitioner, would submit that though Mr. P. Thirumalairajan, advocate, who conducted the trial of the case as Public Prosecutor, has recommended preferring an appeal against the acquittal of 23 accused, the State has not preferred appeal so far. For this, the learned Public Prosecutor pointed out that based on the factual finding rendered by the learned trial Judge , and the materials available, the State has not preferred appeal against the acquittal. He also contended that there is no motive and the decision was taken based on the materials placed before the learned trial Judge. He further contended that the agg rieved complainants if they want can prefer Revision and as a matter of fact, some Revisions have been filed against the order of acquittal.

10. Mr. P. Rathinam, after taking us through the dispute over the two groups of people, in the village concerned and also of the fact that the victims are Scheduled Caste people, in view of the fact that State has not preferred appeals so f ar against the order of the acquittal of 23 accused, considering Rule 4 (5) of the Scheduled caste and Scheduled Tribe (Prevention of Atrocities) Rules, 1995, an eminent senior advocate may be appointed as Special Public Prosecutor to conduct the crimina l appeals arising out of S.C.No.10/2001 of Principal Sessions Judge, Salem. There is no dispute that as against the conviction and sentence of life imprisonment, awarded on 17 persons, they preferred appeals which were admitted by the Division Bench of this Court and notices were ordered. In so far as the acquittal of other 23

accused is concerned, it is the claim of the State Public Prosecutor that absolutely there is no material to file appeals against the same. It is not disputed that against the order of acquittal, the aggrieved persons have preferred Revisions before this Court. The statement made by the learned Public Prosecutor regarding the merits of the case and his reason for not filing appeals cannot be rejected. As rightly pointed out, the appeals filed by the accused and the Revisions filed by the aggrieved persons can be heard together and at the time of hearing of the appeals, and while probing the matter with all the details, if there is any merit, this Court can issue appropriate direction for filing appeal against the order of acquittal, depending on the merits of the case. We are of the view that the said issue cannot be gone into by this Court in this petition.

11. Coming to the claim of the petitioner for appointment of Mr. K.G. Kannabiran, senior advocate, Secundrabad, as Special Public Prosecutor , we have already referred to the assertion made by the State Public Prosecutor that he and his of fice are fully competent and equipped to carry out the cause of the petitioner. Further, as rightly pointed out by the learned Public Prosecutor, the present Public Prosecutor does not suffer any infirmity from further prosecuting the cases/appeals file d by the aggrieved persons. We are conscious of the fact that the present Public Prosecutor is not only a senior advocate, but also fully equipped in the criminal side. It is true that in Writ Petition Nos. 12111 to 12113/2001 (R.S. Bharathi v. State of Tamil Nadu), by order dated 23-07-2001, the First Bench of this Court, directed the Government to appoint Mr. K.V. Venkatapathy, senior counsel and former Advocate General to prosecute Criminal Appeals Nos. 972, 973, 977, 981, 987 and 974 of 2000 etc. The said order was passed at the instance of one Mr. R.S. Bharathi, an advocate and President of Alandur Bar Association as well as Chairman of Alandur Municipality. It is further seen that against the order of the Special Judge III/XIII Additional Jud ge, Chennai in C.C.No.4/97 which ended in conviction, respondents 3 to 8 in the above referred writ petitions have filed the said Criminal Appeals. Taking note of the fact that the third respondent in the said writ petition is the Chief Minister of this State and heading the Government, and other persons are Officers of this State, keeping in view the principle that justice should not only be done, but also appears to be done, directed the Government to take the services of Mr. K.V. Venkatapathy, senio r counsel and former Advocate General to prosecute the aforesaid appeals. Apart from the above decision, Mr. P. Rathinam has also cited a decision in Sunil Kumar Pal v. Phota Sheikh, reported in (1984) 4 Supreme Court Cases 533) and a portion from the r ecommendations made by Malimath Committee, appointed on reforms of Criminal Justice System. In so far as the recommendations of the Malimath Committee, even according to the learned counsel for the petitioner, the recommendations are still pending consid eration with the Central Government. In so far as the other two cases, the first one by this Court, admittedly one of the parties is the Chief Minister of this State. In the case decided by the Supreme Court, direction was issued for appointment of Spec ial Public Prosecutor to conduct the trial in the City Civil Court and Sessions Court, Calcutta and not at the stage of hearing of the appeal by the High Court. In the peculiar facts and circumstances available in those two cases, we are of the view tha t the direction issued therein are not applicable to the case on

hand.

12. It is also relevant to refer Section 301 of the Code of Criminal Procedure which deals with appearance by Public Prosecutor:

"Section 301. Appearance by Public Prosecutors.- (1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or app eal.

(2) If in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall ac t therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case."

The above provision makes it clear that Public Prosecutor or Assistant Public Prosecutor can appear and plead before any Court in which the said case is under enquiry, trial or appeal. However, sub-section (2) says that any private person can instruct t he Public Prosecutor or Assistant Public Prosecutor and with the permission of the Court, submit written arguments after the evidence is closed. It is clear that it is the Public Prosecutor or the Assistant Public Prosecutor to conduct the prosecution in a case which is under enquiry, trial or appeal. However, any private person can instruct the Public Prosecutor or Assistant Public Prosecutor under the directions of the Public Prosecutor or the Assistant Public Prosecutor and with the permission of the Court can also submit written arguments after the evidence is over. The role of the Public Prosecutor is to safeguard the interest of both the accused and the complainant. The prosecutor is bound by law and professional ethics and his role as an of ficer of court is to employ only fair measures. The Public Prosecutor has to act in the interest of justice and must present the facts without bias and without undue emphasis on any aspect of the case leaving the decision to the Court. In view of the ab ove and in the light of our conclusion that the State Public Prosecutor and his office are fully competent and equipped to carry out not only the cause of the petitioner but the cause of the State, we are not inclined to accede to the request of the pet itioner for appointment Mr. K.G. Kannabiran, senior advocate, Secundrabad as Special Public Prosecutor. Though this Court had appointed a Special Public Prosecutor to conduct the trial before the Principal sessions Court, Salem, after transfer from Madu rai, the same position cannot be equated to the Appeals and Revisions which are pending before this Court. Even the rule referred to by the learned counsel for the petitioner, namely, Rule 4 (5) of SC and ST (Prevention of Atrocities) Rules, 1995 refers that the District Magistrate or the Sub Divisional Magistrate may if deemed necessary or if so desired by the victims of atrocity, engage an eminent Senior Advocate for conducting cases in the Special Courts. In the light of the specific reference to t he matters pending before "Special courts", similar request cannot be entertained before this Court, particularly when the matter is being heard by a Division Bench of this Court. As rightly pointed out by the learned Public Prosecutor, there is no prov ision of law entitling aggrieved

persons to have counsel of their own choice whose interest is being fully taking care of by the State. We have already observed that State Public Prosecutor does not suffer any infirmity. It is needless to mention that it is the paramount duty of the State to take care of all irrespective of caste, religion etc. Taking note of all these aspects and the question to be considered in the appeals as well as Revisions, we are not inclined to accept the request of the petit ioner in appointing Mr. K.G. Kannabiran, senior advocate, Secundrabad as Special Public Prosecutor to conduct those cases. While reiterating the fact that the interest of the petitioner and others are being fully taken care of by the State. Learned Publ ic Prosecutor submitted that if the Court is of the opinion that any member of the Bar may be appointed to assist the State Public Prosecutor, he has no objection for the same. Considering the same, we requested Mr. P. Rathinam who is evincing more inte rest in the cause of down-trodden to assist Public Prosecutor in all the above matters. However, he declined to accept our request. Though we are of the view that Public Prosecutor himself is sufficient to safeguard the interest of the petitioner and o thers, considering the request made by the petitioner, the volume of work, namely, appeals preferred by the accused, revisions by the aggrieved persons, we deem it fit to appoint Mr. P. Venkatasubramanian, a Member of the Bar practising in the Criminal s ide who is also in the panel of advocates in Tamil Nadu State Legal Services Authority as well as Madras High Court Legal Aid Centre to assist the Public Prosecutor in all the appeals and revisions. We were informed by the State and High Court Legal Ser vices Authority that Mr. P. Venkatasubramanian is a Member in 'B' Panel appearing in many criminal appeals, including Referred Trial matters on behalf of the Legal Services Authority. As requested by this Court, he agreed to assist the Public Prosecutor in all the above matters pending in this Court arising out of S.C.10/2001 dated 26-7-2001 on the file of Principal Sessions Judge, Salem. He is entitled to free set of paper book and all other materials. His remuneration will be fixed by the concerned Court/Bench hearing the appeals and revisions at the time of disposal of the cases.

12. Criminal Original Petition is disposed of in the above terms.

R.B.

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